Supreme Court, U. S.
FILED
AUG 24 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1818

FORD MOTOR COMPANY, a Delaware Corporation,

Petitioner,

v.

COLONIAL FORD, INC., a Utah Corporation, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

JEROME G. SHAPIRO
One Wall Street
New York, New York 10005
(212) 943-6500
Attorney for Petitioner

Of Counsel:

REUBEN S. KOOLYK
HUGHES HUBBARD & REED
One Wall Street
New York, New York 10005

PETER W. BILLINGS
FABIAN & CLENDENIN
800 Continental Bank Building
Salt Lake City, Utah 84101

TABLE OF CONTENTS

		PAGE
I.	Colonial Fails to Respond to Ford's First Reason for Granting the Writ, and Instead Seeks to Inject Irrelevant Factual Issues into the Proceeding	1
II.	Colonial Bases Its Principal Contentions on Misconstructions or Misstatements of the Trial Record	4
	A. Ford Did not "Change Its Story" in Petitioning for Certiorari	4
	B. Ford Did Not Cause Pease to be Given Absolute Control of Colonial or Require Construction of an Uneconomic Facility	6
	1. The Buy-In Requirement	6
	2. The Adequate-Facilities Commitment	8
	C. The Franchise Granted to Colonial Was a New Franchise, Not the Continuation of an Old One	10
III.	The Judgment of the Tenth Circuit Is in Conflict with the Pro-Competitive Philosophy of the Antitrust Laws and with Decisions of Other Circuits	12
	A. The Anti-Competitive Effect of the Tenth Circuit's Judgment	12
	B. The Conflict with Decisions of Other Circuits	14
CONCLUSION		17

TABLE OF AUTHORITIES

Cases: PAGE

Ed Houser Enterprises, Inc. v. General Motors Corp., 595 F.2d 366 (7th Cir. 1978)..... 14, 15

Milos v. Ford Motor Co., 317 F.2d 712 (3d Cir.), *cert. denied*, 375 U.S. 896 (1963)..... 14-16

Randy's Studebaker Sales, Inc. v. Nissan Motor Corp., 533 F.2d 510 (10th Cir. 1976)..... 15, 17

Shor-Line Rambler, Inc. v. American Motors Sales Corp., 543 F.2d 601 (7th Cir. 1976)..... 15, 16

Woodard v. General Motors Corp., 298 F.2d 121 (5th Cir.), *cert. denied*, 369 U.S. 887 (1962).... 14, 15

York Chrysler-Plymouth, Inc. v. Chrysler Credit Corp., 447 F.2d 786 (5th Cir. 1971)..... 15, 17

Miscellaneous:

Automobile Dealer Franchise Act, 15 U.S.C. §§ 1221-1225 (1976)..... Passim

H.R. Rep. No. 2850, 84th Cong., 2d Sess., *reprinted in* [1956] U.S. Code Cong. & Ad. News 4596..... 13, 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1818

FORD MOTOR COMPANY, a Delaware Corporation,

Petitioner,

v.

COLONIAL FORD, INC., a Utah Corporation, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

I.

Colonial Fails to Respond to Ford's First Reason for Granting the Writ, and Instead Seeks to Inject Irrelevant Factual Issues into the Proceeding.

In its petition for a writ of certiorari, Ford Motor Company ("Ford") requested review of specific legal determinations made by the Tenth Circuit in interpreting and applying the Dealer Franchise Act. Ford challenged the Tenth Circuit's ruling that Ford violated that act by requiring the performance of two commitments made by a

prospective dealer and its principal owner to induce Ford to grant a dealership franchise: (i) that the dealership would relocate to adequate facilities, and (ii) that an experienced and capable manager, Marshall Pease, would be named as a participant in the ownership and management of the dealership.

The first reason urged by Ford for granting the writ was that the precedential effect of the Tenth Circuit's decision will be to create an unwarranted impediment to the ability of automobile manufacturers to compete vigorously with one another through their franchised dealers, and a disincentive to franchising arrangements beneficial both to independent businessmen seeking to become franchised dealers and to automobile manufacturers. The effect of the judgment in those respects depends upon the *stated* grounds of the Tenth Circuit in determining that a violation occurred.

Colonial's brief in opposition gives short shrift to the only issues pertinent to Ford's first reason for granting the writ, *i.e.*, whether the *Tenth Circuit's* challenged legal determinations were correct, and if not, whether potential adverse consequences of the incorrect decision by that court merit this Court's attention. Instead, Colonial has principally addressed the question of whether the *jury* had before it bits and snatches of factual, evidentiary detail, much of it irrelevant to the Tenth Circuit's legal determinations, showing wrongdoing on Ford's part.

The tangled mass of disputed factual issues raised in Colonial's brief should not be permitted to obscure the fact that the Tenth Circuit held Ford liable under the Dealer Franchise Act for a specific and discrete violation, *i.e.*, enforcing "conditions to be met before a franchise

would be given" (A. 10a).[1] The *only* two "conditions" stated as grounds of the Tenth Circuit's decision are "the requirement that Mr. Pease be given a contract to buy into the dealership when created to the extent of forty-nine percent, and that the place of business be changed to a new location with new facilities." *Id.*

In the present context of a petition for certiorari, the bulk of Colonial's brief in opposition, devoted to marshalling evidence that Ford violated the Dealer Franchise Act in respects never referred to in the Tenth Circuit's opinions, is beside the point. It merely confuses the issue to argue, for example, that the evidence presented at trial showed that Ford coerced Colonial into obtaining its financing from Ford Credit; that Ford and Ford Credit neglected to keep Belnap apprised of the affairs of his dealership; that Ford Credit was at first overly lax with respect to Colonial's practice of "floating" on Ford Credit's money, and later overly strict.

No manufacturer reading the Tenth Circuit's decision to guide its franchising practices, and no court relying on that decision as precedent, could conceivably construe it as turning on such findings.

---

1. References to "(A. ____)" are to pages of the separate appendix to Ford's certiorari petition.

II.

Colonial Bases Its Principal Contentions on Misconstructions or Misstatements of the Trial Record.

Colonial structures its opposition on three principal contentions, each based upon a misconstruction or misstatement of the trial record. First, Colonial contends that Ford is precluded from seeking review of the Tenth Circuit's decision, on the basis of the erroneous assertion that Ford's petition contains a change in the "story" Ford presented to the jury at trial. Second, Colonial contends that Ford deprived Colonial of the right to control its business on the basis of (i) the erroneous assertion that Ford required a transfer of "absolute control" and construction of "uneconomic facilities", and (ii) the erroneous flat denial that Colonial had made a pre-franchise adequate-facilities commitment. Third, Colonial impliedly contends that the Dealer Franchise Act applies to Colonial's commitments made before its franchise was granted, on the basis of the erroneous assertion that the franchise was not a new one, but rather was a continuation of an old one. In arguing these points, Colonial goes not only beyond the reaches of the Tenth Circuit's opinions, but beyond the reaches of the factual record.

A. Ford Did Not "Change Its Story" in Petitioning for Certiorari.

Colonial asserts that the "story" on which Ford predicates its petition for certiorari is a different "story" from that upon which Ford relied at the trial. On the basis of that assertion, Colonial would have this Court deny the writ. In support of its assertion, Colonial points

to the testimony at trial of Ford employees, each of whom denied having engaged in certain specific conduct with regard to which he was being cross-examined. However, Ford's position on certiorari is in no way inconsistent with those denials. Ford's petition for certiorari does not state that those employees, or any Ford employees, engaged in the conduct in question.

Ford's position on certiorari is based upon the fact that, in granting the Colonial franchise, it relied upon commitments made on behalf of Colonial to assure Ford that Colonial would be in a position to provide effective representation for Ford products in the competitive arena. The fact that those commitments were made and relied upon by Ford was presented and not disputed at the trial.

With respect to the buy-in requirement, Belnap represented his intention to give Pease a buy-in when Belnap urged his franchise application upon Ford's Dealer Policy Board. JA 678-79, 1442, 1452.[2] Furthermore, Belnap's attorney represented to the Board at the same meeting that Belnap had full confidence in Pease's ability to manage the dealership successfully. JA 1454.[3] Finally, those representations were relied upon by Ford in granting the Colonial franchise. JA 678-79, 1316-20, 1324.

2. References to "JA-" are to pages of the Joint Appendix submitted by the parties on appeal of the district court judgment to the Tenth Circuit.

3. The need for the buy-in to assure Pease's continuing participation was underscored at the Board meeting. Pease represented there that he had left the Ford dealership with which he had formerly been associated and joined Belnap because he sought a situation in which he could obtain an equity interest in addition to managerial responsibilities. JA 1454.

Like the intention to provide Pease an equity interest, the intention to provide new, adequate facilities[4] was shown at trial to have been part of the program for Colonial's future outlined by Belnap at the Dealer Policy Board meeting to induce Ford to grant the franchise. JA 178, 678-79, 1316-20, 1324, 1442. And a commitment to provide adequate facilities was unequivocally written into Colonial's franchise application. JA 1430.

B. Ford Did Not Cause Pease to be Given Absolute Control of Colonial or Require Construction of an Uneconomic Facility.

Colonial urges that Ford implemented a broad scheme to "deprive Colonial of the right to run its business" (Brief in Opp. at pp. 2, 16, 18, 20, 26). To support this contention, Colonial argues that the buy-in requirement ousted Belnap of all control over Colonial and gave it to Pease (*Id.* at pp 3-4, 12-13, 26), and that the adequate-facilities requirement was an imposition by Ford on Colonial of an uneconomic facility (*Id.* at pp. 6-7, 14-18, 23). However, not only did the Tenth Circuit not reach those conclusions, but the jury could not properly have reached them.

1. *The Buy-In Requirement*

Colonial does not dispute Ford's claim that an automobile manufacturer may legitimately condition its acceptance of a franchise application upon inclusion of a qualified manager in equity ownership of the dealership. The obvious purpose

4. Ford's dissatisfaction with the facilities from which Colonial proposed to begin operations, and Ford's conviction that new facilities were necessary if the proposed dealership was to meet its competitive potential, had been clearly indicated to Belnap. JA 155-56, 319, 623-24.

of such a condition is to assure the manager's long-term interest in the dealership's success. Colonial argues, however, that in requiring Belnap to enter into the buy-in agreement with Pease, Ford did more than assure the equity participation of a qualified manager. Colonial argues that the agreement effectively ousted Belnap from all control of Colonial and placed sole and absolute control of Colonial in Pease.

Colonial's argument is premised on a confusion between what the jury may have understood Ford to have *demanded*, if Belnap's testimony was believed, and what the jury may have found Ford to have *accomplished* by its demands. Whether or not Ford desired, or demanded, that Pease be given sole control of the dealership, it is clear that the written buy-in agreement, by which "control" was allegedly transferred, refers to nothing more than the right to manage Colonial's daily business operations. Nothing contained in the buy-in agreement deprived Belnap, as the president and majority shareholder of Colonial, of the right to exercise ultimate control over corporate and dealership affairs.[5]

In its attempt to characterize the buy-in as a device by which Pease was given full control of the dealership, Colonial quotes only a portion of the relevant contractual provision (Brief in Opp. at p. 12). That provision, paragraph 5 of the buy-in agreement, reads in full as follows:

> "The Party of the First Part, Marshall Pease, shall be in charge of operating the franchise dealership and shall have the authority to carry out all rights, duties and obligations in connection thereto *with*

5. Even the right given Pease to manage daily operations was not exclusive of, but supplementary to Belnap's rights. As the Tenth Circuit explicitly found, Belnap and Pease *both* had full managerial authority and responsibility under the terms of Colonial's franchise (A. 12a).

> *respect to the daily operation.* The Party of the First Part agrees to discharge this obligation in a manner acceptable to Ford Motor Company." JA 1140. (Emphasis supplied.)

Colonial's statement (Brief in Opp. at p. 12) that this provision was dictated by Mr. Parr, a Ford representative, flatly contradicts the testimony of Colonial's own trial witness, Mr. Summerhays. Mr. Summerhays, an attorney who represented Belnap, testified that the provision was drafted by him for the specific purpose of making clear that Belnap was *not* surrendering ultimate control of the dealership to Pease. JA 397-98.

2. *The Adequate-Facilities Commitment*

The Tenth Circuit held that Ford violated the Dealer Franchise Act by requiring Colonial, before its franchise was granted, to commit itself to acquiring better facilities than it then had, and later holding Colonial to that commitment. Rather than address Ford's argument that a manufacturer may legitimately require and enforce such an adequate-facilities commitment to insure the competitive strength of its dealer, Colonial's brief in opposition, incredibly, flatly denies that Colonial made any such commitment (Brief in Opp. at pp. 14, 23). Treating relocation as if it were a new demand first made by Ford after Colonial's franchise was granted, Colonial argues that the demand was unreasonable because Colonial could not operate profitably from the larger new facilities.

Colonial's assertion that it "did not have any contractual commitment to relocate and construct a new facility" flies in the face of the Tenth Circuit's finding to the contrary (A.10a,15a), Colonial's formal pre-trial admission that it committed itself to acquire new facilities (JA 130),

and the express terms of the written application submitted by Colonial to obtain its franchise. That application (JA 1430), expresses Colonial's understanding and agreement that (a) the facilities it was to obtain from the predecessor dealership were not adequate to meet the standards specified in Ford's standard franchise agreement, (b) that its new franchise would be effective on condition that it use those facilities only on a temporary basis, and (c) that it would provide other facilities by July 1, 1970 that would comply fully with the standards specified in Ford's standard franchise agreement.

Nothing in the Tenth Circuit's opinions in any way adopts Colonial's contention that Ford acted unreasonably with respect to implementation of Colonial's adequate-facilities commitment during the term of the franchise. In fact, the jury could not properly have found that Ford forced Colonial to move to an "uneconomic" facility, since the evidence at trial showed unequivocally that the dealership's most profitable periods were those following the move to the new facilities. Indeed, Colonial relied, in presenting its rejected antitrust damage claim,[6] on a showing of profits made subsequent to relocation as a measure of the dealership's potential profitability. JA 1385, 1388.[7]

---

6. The primary emphasis of Colonial's case at trial was on an alleged antitrust cause of action claiming a conspiracy with respect to Colonial's financing, allegedly culminating in a cut-off of Colonial's floor-plan credit line. The theory of causation relied upon by the Tenth Circuit in sustaining the Dealer Franchise Act claim, which attributed the cut-off of Colonial's credit line to the pre-franchise conditions required by Ford, originated with the Tenth Circuit, and was never urged at trial by Colonial.

7. Colonial claims that "[t]he adverse impact of Colonial's new facility on Colonial's liquidity and profitability was admitted by Ford" (Brief in Opp. at p. 7). Ford made no such admission,

(footnote continued on following page)

C. The Franchise Granted to Colonial Was a New Franchise, Not the Continuation of an Old One.

Ford required the buy-in and the adequate-facilities commitment in the period between May 1969, when Petty Ford, Inc. was notified that its franchise would be terminated, and September 1969, when Colonial received its Ford franchise. Colonial argues that it was not a "prospective" dealer during this period, and that Ford's two conditions were not "pre-franchise" conditions (Brief in Opp. at pp. 13-14). Colonial argues that because it was practically and technically the "successor" to Petty Ford, Inc., and because the Petty Ford, Inc. franchise was assigned to Colonial, Ford's two conditions should be treated as demands made upon an existing franchisee.

However, the substantive question of whether the Petty Ford, Inc. franchise was continued in Colonial or was a new franchise does not turn on whether Colonial was Petty Ford, Inc.'s "successor" or whether Petty Ford, Inc.'s franchise was formally assigned to Colonial. The question of continuation or not as a substantive matter turns on whether (i) Colonial was a corporate entity different from Petty Ford, Inc., and (ii) Colonial was merely taking over an ongoing dealer franchise issued to Petty Ford, Inc. or was the subject of a decision by Ford to terminate Petty Ford, Inc.'s status as a Ford dealer and grant to *Colonial* the right to be a Ford dealer.

---

but, on the contrary, argued strenuously at trial that Colonial's downfall was caused by the refusal of its owners to maintain adequate amounts of working capital, and by their resort to financing Colonial's operations with Ford Credit's money rather than their own.

Prior to trial, Colonial formally admitted that it was not the "same legal entity" as Petty Ford, Inc. JA 131. Furthermore, the events which transpired between the notice of termination of Petty Ford, Inc. and the grant of Colonial's franchise clearly show that, apart from formalities and legal technicalities, an entirely new dealership was created to replace the ineffective Petty dealership.

As of the date of Ford's notice of termination, the Petty family owned the existing franchised dealership and participated in its management. Belnap had no equity investment in the dealership, no plans existed to renovate or replace the dealership's physical facilities, and Pease was a salaried employee. In the next few months, Belnap entered into a series of agreements designed totally to alter that situation. He agreed to buy out the entire interest of the Pettys and to sell Pease a minority interest in Colonial. On behalf of Colonial, Belnap agreed to replace the Petty Ford facilities and to accept assignment of the Petty Ford franchise. All these agreements were conditioned on Ford's approving Colonial as its dealer,[8] either by approving an assignment of the Petty Ford franchise to Colonial or by entering a new franchise agreement with Colonial. The approval took place on September 2, 1969, when Ford concurrently approved the assignment, terminated the Petty Ford franchise, and granted a new franchise to Colonial.

---

8. Immediately before meeting with Ford's Dealer Policy Board, Belnap unconditionally invested in the dealership to the extent of 51%, but made his agreement with the Pettys to purchase the remaining 49% conditional on Ford's approval. JA 1449.

The Tenth Circuit, recognizing that the buy-in agreement and relocation commitment were made "before a franchise would be given", stated that they must nevertheless be considered part and parcel of the franchise relationship which was subsequently formed because they were "carried over into the formal dealership period" (A. 10a.). That conclusion reflects the erroneous legal determination of the Tenth Circuit that the Dealer Franchise Act in effect prohibits a manufacturer from insisting on ownership arrangements and facilities commitments while negotiating with an applicant for a franchise. It is by necessary implication a rejection of Colonial's theory that Ford imposed requirements on an existing franchised dealership.

III.

The Judgment of the Tenth Circuit Is in Conflict with the Pro-Competitive Philosophy of the Antitrust Laws and with Decisions of Other Circuits.

A. The Anti-Competitive Effect of the Tenth Circuit's Judgment

If the Tenth Circuit's decision were a correct expression of the law, an automobile manufacturer would be unable to rely upon commitments made during franchise negotiations, calculated to assure the manufacturer that it will receive effective product representation. Not only would this inhibit the vigor of interbrand competition among dealers, but, as explained in Ford's petition, dealer franchise applicants would be disadvantaged in their efforts to enter the automobile industry if they could not meet

all franchise standards at the time of first contact with a prospective franchisor.

Colonial points out, correctly, that the Dealer Franchise Act was intended to protect the right of franchised dealers to function as independent businessmen. The purpose of the legislation, however, was to protect existing franchisees against use by manufacturers of dealers' franchise investments as leverage to exact concessions. It was not enacted to permit an applicant for a new franchise to make promises in order to obtain a franchise, knowing that those promises can later safely be ignored.

The legislative history of the Dealer Franchise Act to which Colonial refers supports the view that it was not intended as an impediment to maintenance by a manufacturer of a competitive network of franchised dealers. As the House Report states:

> "The bill, however, does not prohibit the manufacturer from terminating or refusing to renew the franchise of a dealer who is not providing the manufacturer with adequate representation. Nor does the bill curtail the manufacturer's right to cancel or not to renew an inefficient or undesirable dealer's franchise." H. R. Rep. No. 2850, 84th Cong., 2d Sess., *reprinted in* [1956] U.S. Code Cong. & Ad. News 4596 at 4603.

Furthermore, the House Report specifically refers to the antitrust objectives of the legislation in warning that it should not be applied as an impediment to achievement of pro-competitive objectives. The Report's statements to that effect, in the context of a manufacturer's efforts to increase sales by appointing *additional dealers* in an existing franchisee's location, apply *a fortiori* to a manufac-

turer's attempt to increase sales by insisting on *strengthening* the management and facilities of a prospective dealer:

> "The committee emphasizes that the bill does not afford the dealer the right to be free from competition from additional franchise dealers. Appointment of added dealers in an area is a *normal competitive method* for securing better distribution and curtailment of this right would be inconsistent with the *antitrust objectives of this legislation*." *Id.* (Emphasis supplied.)

B. The Conflict with Decisions of Other Circuits

In its petition, Ford cited the decisions of three other circuits which conflict with the Tenth Circuit's judgment. Those decisions, *Woodard v. General Motors Corp.*, 298 F.2d 121 (5th Cir.), *cert. denied*, 369 U.S. 887 (1962), *Ed Houser Enterprises, Inc. v. General Motors Corp.*, 595 F.2d 366 (7th Cir. 1978) and *Milos v. Ford Motor Co.*, 317 F.2d 712 (3d Cir.), *cert. denied*, 375 U.S. 896 (1963), upheld a manufacturer's right to rely on dealers' pre-franchise commitments to obtain new, adequate facilities during the franchise term.

Colonial attempts to reconcile the present decision with those decisions by relying on two false premises. The first false premise is that Colonial made no pre-franchise commitment to acquire new facilities.[9] The second is that the decisions of other circuits cited by Ford turned simply on a factual inquiry into whether the required new facilities were economic or not.

---

9. The erroneousness of this premise has been demonstrated in Point II B.2. at pp. 8-9, above.

Thus, Colonial states (Brief in Opp. at p. 24) that, in the cases cited by Ford, the dealers' existing facilities required to be replaced were undisputedly inadequate, and, by implication, characterizes the holdings as simply determinations that the required replacement facilities were economic. Colonial then seeks to contrast these decisions with other decisions supposedly holding manufacturers liable for violating the Dealer Franchise Act by demanding a move to "uneconomic" facilities. It cites *Shor-Line Rambler, Inc. v. American Motors Sales Corp.*, 543 F.2d 601 (7th Cir. 1976), *Randy's Studebaker Sales, Inc. v. Nissan Motor Corp.*, 533 F.2d 510 (10th Cir. 1976) and *York Chrysler-Plymouth, Inc. v. Chrysler Credit Corp.*, 447 F.2d 786 (5th Cir. 1971). Colonial's characterizations of the holdings of both sets of decisions, those cited by Ford and those cited by Colonial, are misleading.

In *Woodard*, *Ed Houser* and *Milos*, the courts rejected dealers' claims that relocation demands were coercive on the ground that the dealers, as in the present case, had expressly committed themselves to relocation prior to, and as an inducement for, the grant of their franchises. The economic wisdom of that commitment was not critical to those courts' decisions. What was critical was that pre-franchise commitments had been made which were designed to assure the manufacturer that its dealer would "have the facilities for coping with the sales efforts of those who are dealing in the products of competitors." *Woodard*, *supra*, 298 F.2d at 128.

In *Milos*, for example, Ford granted a franchise after receiving a commitment that new facilities would be acquired within two years. All parties there had not agreed that Ford's aim was to move the dealer to "reasonable" or "economic" facilities. When Ford called on the dealer to fulfill its commitment, the dealer replied that while "he

was willing to engage in a reasonable building program . . . the size of the facilities suggested by the Ford representatives was unreasonable." 317 F.2d at 714. At trial, the "essence" of the dealer's claim was that Ford's "sales and facilities requirements were oppressive and unreasonable." 317 F.2d at 715. Apparently the jury agreed, for it awarded the dealer a verdict on its Dealer Franchise Act claim. Nevertheless, the Third Circuit affirmed judgment for Ford notwithstanding the verdict. It held that "[a]n attempt to enforce an unambiguous contractual obligation", under those circumstances, "can hardly be said to constitute coercion or intimidation." 317 F.2d at 717-18.

By contrast, *Shor-Line Rambler* involved a situation in which no pre-franchise commitment with respect to facilities had been made by the dealer. On the contrary, the court found that, at the time the franchise was granted,

> "American Motors personnel reported to their home office that the floor space available at Shor-Line was adequate and that the present location and appearance of the facility were satisfactory." 543 F.2d at 603.

Subsequently, during the term of Shor-Line's franchise, American Motors abruptly demanded that Shor-Line relocate:

> "Shor-Line was given 90 days to totally change its character. Not only were extensive personnel changes required, but new facilities were requested, all of which demanded unreasonable and unrealistic expenses for the dealer." 543 F.2d at 604.

The court upheld the jury's finding that American Motors' surprise attempt to change the character of the dealership during the term of the franchise was coercive.[10]

CONCLUSION

Because the Tenth Circuit's decision, in conflict with the decisions of other circuits, places an interpretation on the Dealer Franchise Act that would have a significant adverse effect on competition and franchising in the automobile industry, this Court should grant certiorari.

August 24, 1979

Respectfully submitted,

JEROME G. SHAPIRO
One Wall Street
New York, New York 10005
(212) 943-6500
Attorney for Petitioner

Of Counsel:

REUBEN S. KOOLYK
HUGHES HUBBARD & REED
One Wall Street
New York, New York 10005

PETER W. BILLINGS
FABIAN & CLENDENIN
800 Continental Bank Building
Salt Lake City, Utah 84101

10. Neither *Randy's Studebaker Sales* nor *York Chrysler-Plymouth* supports the proposition for which it is cited, and Colonial's statement (Brief in Opp. at p. 25) that its quotation from *York Chrysler-Plymouth* was made "with regard to the facility requirements of manufacturers" is inaccurate.